

# BEST BEST & KRIEGER

ATTORNEYS AT LAW

INDIAN WELLS  
(760) 568-2611

IRVINE  
(949) 263-2600

LOS ANGELES  
(213) 617-8100

ONTARIO  
(909) 989-8584

655 West Broadway, 15th Floor  
San Diego, California 92101  
(619) 525-1300  
(619) 233-6118 Fax  
BBKlaw.com

RIVERSIDE  
(951) 686-1450

SACRAMENTO  
(916) 325-4000

WALNUT CREEK  
(925) 977-3300

Cyndy Day-Wilson  
(619) 525-1305  
Cyndy.Day-Wilson@bbklaw.com  
File No. 60557.00006

March 19, 2007

## VIA E-MAIL AND FEDEX

State Water Resources Control Board  
Office of Chief Counsel  
Attention: Dolores White  
Staff Services Analyst  
1001 "I" Street, 22nd Floor  
Sacramento, CA 95814

Re: Bell Junior High School Landfill – Facility ID 9000000916

Dear Ms. White:

Please find enclosed San Diego Unified School District's ("School District") Second Amended Petition for Review. The Petition seeks review of the California Regional Water Quality Control Board San Diego Region's ("Regional Board") imposition of certain monitoring and reporting requirements allegedly contained within Regional Board Order No. 97-11 on the School District for the Bell Junior High Landfill ("Landfill").

The Regional Board issued a Notice of Violation ("NOV") to the School District alleging that the School District failed to comply with certain monitoring and reporting requirements or the Landfill:

1. Reporting Requirement E.8 of Order No. 97-11 requiring the discharger to establish and maintain a groundwater detection monitoring program.
2. Sections D. and E. of Monitoring and Reporting Program No. 97-11 (as modified by Addendum 1 to Order No. 97-11) requiring the submittal of ground water monitoring reports to the Regional Board Executive Officer.

The School District challenged the issuance of the NOV to the Regional Board on December 19, 2006 on the basis that the County of San Diego ("County") not the School District was the undisputed sole operator of the Landfill and thus responsible for the monitoring and reporting requirements and also because the Landfill was not a threat to groundwater at or surrounding the Landfill. In addition, the School District requested a waiver of these requirements.

State Water Resources Control Board  
March 19, 2007  
Page 2

The Regional Board denied the School District's challenge to the imposition of the monitoring and reporting requirements (as outlined in the NOV) on January 23, 2007. The Regional Board also refused to impose such requirements (as contained within Order No. 97-11) upon the County.

The School District filed its original petition challenging the Regional Board's decision on February 22, 2007. However, on March 1, 2007, the State Board Resources Control Board ("State Board") refused to accept the petition due to alleged procedural deficiencies. Specifically, the State Board claimed that the petition appeared to be untimely and appeared to challenge a document that is not a final action subject to review. The State Board, however, invited the School District to resubmit a "complete petition" by March 9, 2007 for consideration.

On March 8, 2007, the School District submitted its First Amended Petition. The School District attached the NOV issued by the Regional Board on December 6, 2006 for violations of the monitoring and reporting requirements; Order No. 97-11 and accompanying Addendums; the School District's December 19, 2006 letter to the Regional Board challenging the monitoring and reporting requirements; and the Regional Board's January 23, 2007 letter to the School District refusing to grant the School District's request to waive the monitoring and reporting requirements, among other things. These documents demonstrated that the School District's original petition was timely and that the School District seeks State Board review of a final Regional Board action.

Nevertheless, on March 12, 2007, the State Board again took the position that the School District's First Amended Petition was "defective." The State Board's position is without merit.

First, the State Board claims that the School District's First Amended Petition "continued to refer to review of the NOV and of the waste discharge requirement." The School District attached and referred to the NOV, *as requested by the State Board in its March 1 letter*, because the NOV specifies the specific monitoring and reporting requirements that the Regional Board is imposing on the School District. As the State Board acknowledges in its response, the First Amended Petition was clear that the School District requests a waiver of the monitoring and reporting requirements pursuant to Section C. of the Monitoring and Reporting Program for Order No. 97-11. The Regional Board's refusal to waive the monitoring and reporting requirements is a "final agency action" subject to review by the State Board. (With regard to the Waste Discharge Requirement (WDR) fees imposed on the Landfill, the First Amended Petition referred to the fees simply as *background information*.)

In addition, the State Board claims that "[t]he School District's claim regarding the County is not timely, since it could have been raised when the WDRs were adopted or when one of the addenda was adopted." The School District's claim "properly raises" a legal issue and is not a procedural deficiency in the School District's First Amended Petition. There is no basis for claiming that this request makes the Second Amended Petition "defective."

**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

State Water Resources Control Board  
March 19, 2007  
Page 3

Third, the State Board claims that the School District's First Amended Petition is defective because the name and contact information of the petitioner are not included. The title page clearly indicates that the petition is being submitted by the School District's attorney on behalf of the School District and lists our contact information. The School District's Second Amended Petition further lists the contact information for an employee of the School District who is responsible for overseeing issues involving the Landfill.

Fourth, the State Board claims that the School District's First Amended Petition should have included "[a] statement that the petition has been sent to the discharger," which the State Board did not request in its response to the original petition. The School District's Second Amended Petition includes this statement and a proof of service on the County.

If you have any questions, please do not hesitate to call me.

Sincerely,



Cyndy Day-Wilson  
for BEST BEST & KRIEGER LLP

Enclosures

cc: Jose Gonzales, Esq. (w/enc.)  
William Dos Santos (w/enc.)

1  
2  
3 **STATE OF CALIFORNIA**

4 **STATE WATER RESOURCES CONTROL BOARD**  
5

6 In the matter of the Petition of:

7 **SAN DIEGO UNIFIED SCHOOL**  
8 **DISTRICT**

9 FOR REVIEW OF ACTION BY THE  
10 CALIFORNIA REGIONAL WATER  
11 QUALITY CONTROL BOARD, SAN  
12 DIEGO REGION, IMPOSING  
13 MONITORING AND REPORTING  
14 REQUIREMENTS IN ORDER NO. 97-11  
15 AND ADDENDUM NO. 1 ON THE  
16 BELL JUNIOR HIGH LANDFILL,  
17 FACILITY ID 9000000916

Case No.

**SECOND AMENDED PETITION FOR  
REVIEW OF:**

**IMPOSITION OF MONITORING AND  
REPORTING REQUIREMENTS  
PURSUANT TO SAN DIEGO REGIONAL  
WATER QUALITY CONTROL BOARD  
ORDER NO. 97-11**

[Water Code § 13320(a)]

15 Attorneys for **PETITIONER:**

16 **CYNDY DAY-WILSON, ESQ.**  
17 **LINDSAY PUCKETT, ESQ.**  
18 **BEST BEST & KRIEGER LLP**  
19 **655 West Broadway, 15<sup>th</sup> Floor**  
20 **San Diego, CA 92101**  
21 **Telephone: (619) 525-1300**  
22 **Facsimile: (619) 233-6118**  
23 **Cyndy Day-Wilson.bbklaw.com**

24 **SAN DIEGO UNIFIED SCHOOL**  
25 **DISTRICT:**

26 **WILLIAM DOS SANTOS**  
27 **SAN DIEGO UNIFIED SCHOOL**  
28 **DISTRICT, MAINTENANCE AND**  
**OPERATIONS CENTER**  
**4860 Ruffner Street**  
**San Diego, CA 92111-1522**  
**Telephone: (858) 627-7121**  
**bdossantos@sandi.net**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

PAGE NO.

I. INTRODUCTION ..... 1

II. NAMES AND ADDRESSES OF PETITIONER ..... 2

III. ACTIONS OF THE CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD THAT ARE THE SUBJECT  
OF THIS PETITION ..... 2

IV. DATE THAT THE REGIONAL BOARD ACTED ..... 3

V. STATEMENT OF REASONS THE ACTION WAS INAPPROPRIATE ..... 3

VI. HOW THE PETITIONER IS AGGRIEVED ..... 7

VII. ACTIONS PETITIONER REQUESTS THE STATE BOARD TO TAKE ..... 11

VIII. LIST OF PERSONS INTERESTED IN THIS MATTER ..... 11

IX. STATEMENT OF COPIES FURNISHED ..... 11

X. ADMINISTRATIVE RECORD ..... 12

XI. CONCLUSION ..... 12

I.

**INTRODUCTION**

1. Petitioner San Diego Unified School District ("School District") challenges the San Diego Regional Water Quality Control Board's imposition of certain monitoring and reporting requirements contained within San Diego Regional Water Quality Control Board Order No. 97-11 and Addendum No. 1 upon the School District at the Bell Junior High Landfill ("Landfill") located in San Diego, California. The County of San Diego ("County") operated a sanitary landfill at the site between 1961 and 1967 and is the Landfill's undisputed sole operator.

2. On December 6, 2006, the Regional Board issued a Notice of Violation to the School District alleging that the School District had failed to comply with certain monitoring and reporting requirements of Order No. 97-11. On December 19, 2006, the School District challenged the imposition of those reporting and monitoring requirements by the Regional Board.

3. The School District, as part of its challenge, requested that the Regional Board (1) add the County to Order No. 97-11 and impose the monitoring and reporting requirements (and all other requirements) on the County; (2) waive the monitoring and reporting requirements imposed by Order No. 97 and Addendum No. 1; and (3) at a minimum, suspend any further action on the monitoring and reporting requirements until the threat to groundwater at or surrounding the landfill and the County's responsibility for compliance with Order No. 97-11 are determined.

4. On January 23, 2007, the Regional Board denied the School District's requests. The School District thus has filed a petition to the State Water Resources Board ("State Board") seeking:

(a) the addition of the County to Order No 97-11 and the imposition of all requirements contained within Order No. 97-11 upon the County;

(b) the waiver of all monitoring and reporting requirements (underlying the NOV) contained within Order No. 97-11 upon the School District; and

(c) a suspension of any further action against the School District concerning monitoring and reporting requirements under Order No. 97-11 at the Landfill until (i) the threat, if

1 any, to groundwater can be established, and (ii) the County's responsibility for compliance with  
2 Order No. 97-11 is established.

3 **II.**

4 **NAMES AND ADDRESSES OF PETITIONER**

5 5. The names and contact information for Petitioner is as follows:

6 Attorneys for **PETITIONER:**

7 CYNDY DAY-WILSON  
8 LINDSAY PUCKETT  
9 BEST BEST & KRIEGER LLP  
10 655 West Broadway, 15<sup>th</sup> Floor  
11 San Diego, CA 92101  
12 Telephone: (619) 525-1300  
13 Facsimile: (619) 233-6118  
14 Cyndy Day-Wilson.bbklaw.com

15 **SAN DIEGO UNIFIED SCHOOL**  
16 **DISTRICT:**

17 WILLIAM DOS SANTOS  
18 SAN DIEGO UNIFIED SCHOOL  
19 DISTRICT, MAINTENANCE AND  
20 OPERATIONS CENTER  
21 4860 Ruffner Street  
22 San Diego, CA 92111-1522  
23 Telephone: (858) 627-7121  
24 bdossantos@sandi.net

25 **III.**

26 **ACTIONS OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**  
27 **THAT ARE THE SUBJECT OF THIS PETITION**

28 6. Petitioner seeks review of the Regional Board's determination that: (1) the  
School District has failed to comply with certain monitoring and reporting requirements of Order  
No. 97-11 (as outlined in the NOV); (2) the Regional Board's denial of the School District's  
request that the monitoring and reporting requirements of Order No. 97-11 be waived; and (3) the  
Regional Board's denial of the School District's request that any further action by the Regional

1 Board be suspended pending: (i) a determination that there is a threat to groundwater; and (ii) the  
2 County's responsibility for compliance with Order No. 97-11.

3  
4 **IV.**

5 **DATE THAT THE REGIONAL BOARD ACTED**

6 7. The Regional Board denied the School District's challenge on January 23, 2007.  
7 The School District filed an appeal to the State Board on February 22, 2007.

8  
9 **V.**

10 **STATEMENT OF REASONS THE ACTION WAS INAPPROPRIATE**

11 8. On or about February 6, 1961, the County entered into a written lease agreement  
12 ("Lease") with the School District for the property located at 7300 Paradise Valley Road, San  
13 Diego California for the purpose of operating a sanitary landfill (also known as the Bell Junior  
14 High School Landfill, Paradise Valley Landfill, and Sweetwater II Landfill) ("Landfill"). The  
15 County operated the Landfill under the Lease from 1961 and 1966 and was the Landfill's only  
16 operator. ( A true and correct copy of the Lease is attached hereto as Exhibit 2.)

17 9. As part of the Lease, the County agreed to hold the School District harmless for all  
18 claims against the School District arising out of its operation of the Landfill.

19 5. County, so far as it may lawfully do so, shall hold District  
20 harmless from any or all liability for injury to person or damage to property arising  
21 directly or indirectly from any act or omission of any employee or officer of  
22 County or any person occupying the demised premises under or pursuant to this  
23 agreement.

24 10. On or about January 16, 1967, the Lease terminated and the County vacated the  
25 site. The County, however, never took steps to formally close the Landfill.

26 11. Upon termination of the Lease, and in preparation for the construction of a school,  
27 the School District imported additional fill, re-graded the site, and compacted the landfill portion  
28 of the property. The School District also installed a drainage system. In 1968, the School District  
constructed Bell Junior High School at the property. The school buildings were constructed on



1 native soils east of the Landfill and the Landfill portion of the property has been used as a part of  
2 a playground.

3 12. In 1986, the California Legislature enacted Water Code section 13273, which  
4 directs the State Water Resources Control Board to rank all solid waste disposal sites (as defined  
5 in section 41805.5 of the Health & Safety Code) based upon the threat they may pose to water  
6 quality on or before January 1, 1986. The operators of the first 150 solid waste disposal sites  
7 ranked on the list were to submit a solid wastewater quality assessment test (SWAT) to the  
8 appropriate regional board before July 1, 1987. In 1987 the State Board ranked the Landfill as  
9 13 and later as 15.

10 13. On October 31, 2000, the Regional Board sent a letter to the County confirming  
11 that the County is the "operator" of the Landfill pursuant to Water Code section 13273. The letter  
12 directed the County to complete a SWAT investigation and report that included analytical results  
13 for "leachate and hazardous substances and/or wastes" from a minimum of four quarterly  
14 groundwater monitoring events. (See Exhibit 3 attached hereto.)

15 14. To date, however, the County, as the operator of the Landfill, has failed to submit  
16 a SWAT to the State Board or the Regional Board.

17 15. On or about September 20, 1999, the City of San Diego, Solid Waste Local  
18 Enforcement Agency (LEA) issued a Notice of Violation and Order (NOV) directing the County,  
19 as the operator, and the School District, as the owner, to take corrective action at the Landfill. As  
20 a result of the NOV, the School District submitted a claim to the County. On November 15, 1999,  
21 the School District and the County entered into an agreement entitled "Sharing Agreement  
22 Regarding Regulatory Compliance and Maintenance of Inactive Paradise Valley Sanitary  
23 Landfill" to resolve the immediate issues in the NOV.

24 16. The Sharing Agreement allocated responsibility for the gas monitoring and surface  
25 and drainage maintenance as follows:  
26  
27  
28

1                                1.     LANDFILL GAS CONTROL SYSTEM

2                                COUNTY will continue to maintain and assume all  
3 costs associated with the Landfill Gas Control System, the Structure  
4 Gas Detection/Monitoring Program System and the annual permit  
5 fees issued by the APCD or its successor agency.

6                                2.     MAINTAIN SURFACE OF PLAYGROUND, TOP  
7 DECK, SLOPES & DRAINAGE STRUCTURE

8                                SCHOOL DISTRICT will maintain and assume all  
9 costs required to maintain the surface of the playground, top deck,  
10 slopes and drainage structures on the PROPERTY in accord with  
11 directives from all environmental regulatory agencies, including but  
12 not limited to, the City of San Diego, Solid Waste Local  
13 Enforcement Agency ("LEA").

14                                17.     In addition, the County and the School District agreed to split all Facility Fees and  
15 divided the responsibility of site security:

16                                3.     PERMIT COSTS

17                                COUNTY and SCHOOL DISTRICT will share on  
18 an equal 50/50 basis, all Facility Fees related to the PROPERTY  
19 issued by the LEA or its successor agency.

20                                4.     SITE SECURITY

21                                SCHOOL DISTRICT will take all reasonable steps  
22 to prevent further trespass by adjacent property owners and to  
23 maintain secure playground fencing.

24                                COUNTY will install perimeter fencing from the  
25 PROPERTY flare station to Briarwood and from the southern  
26 boundary of the playground to the existing PROPERTY fence.  
27 Once installed, the SCHOOL DISTRICT will assume all  
28 responsibility for maintenance of the fencing installed by the  
COUNTY.

18.     The Sharing Agreement also contains a Reservation of Rights under which the  
parties agreed that apportionment of future responsibility for cost and maintenance and future  
remediation of the Landfill would be as required by law or by the provisions contained in the  
Lease. Thus, the County remains responsible under the Hold Harmless provision of the Lease for  
all claims against the School District relating to the Landfill.

19.     Despite the apportionment of such fees as outlined in the Sharing Agreement and  
agreed to by the County, the County has failed to pay its share of the fees or accept its

responsibilities for the Landfill.

20. On June 14, 2000, the Regional Board added the Landfill to the list of regulated landfills and imposed new requirements to the post-closure maintenance of the site through Addendum No. 1 to Order No. 97-11 General Work Discharge Requirements for Post Closure Maintenance of Inactive Waste Landfills within the San Diego Region. (See Exhibit 4 attached hereto.) The new requirements include an upgrade of the existing gas control system and the installation of groundwater monitoring wells.

21. The County agreed to update the gas control system. It has refused, however, to install groundwater monitoring wells and perform a SWAT, despite repeated requests from the School District and the Regional Board's determination that it is responsible as the "operator." Under protest, the School District has undertaken the installation of the groundwater monitoring equipment and monitoring and arranged for a SWAT report to be prepared on April 12, 2004.

22. In addition to the Facility Fee imposed by the LEA, the Regional Board has begun (since 1999) assessing a WDR fee on the School District for the Landfill. The County has also failed and refused to pay any portion of the WDR fee (which has been the subject of a separate appeal to the State Board).

23. On December 6, 2006 the School District received a NOV for the alleged failure to comply with certain monitoring and reporting requirements of Order No. 97-11 for the Landfill. (See Exhibit 5 attached hereto.) The NOV states that the School District is in violation of Order No. 97-11 "for failure to submit semiannual monitoring reports" and Technical Change Order No. T-1 to Order No. 97-11 "for failure to submit electronic copies of semiannual monitoring reports." The NOV further states that the School District has failed to comply with the monitoring and reporting requirements for the Landfill set forth in E.8 of Order No. 97-11 (requiring the discharger to establish and maintain a groundwater detection monitoring program) and Sections D. and E. of Monitoring Reporting Program No. 97-11, as modified by Addendum 1 to Order No. 97-11 (requiring the submittal of groundwater monitoring reports to the Regional Board Executive Officer).

24. On December 19, 2006, the School District challenged the imposition of the monitoring and reporting requirements (as outlined in the NOV) upon the School District and further requested a waiver of the monitoring and reporting requirements in Order No. 97-11 and Addendum No. 1 based upon the SWAT report which clearly states that there has been no discharge of hazardous substances to groundwater from the Landfill. (See Exhibit 6 attached hereto.) The School District also requested that the requirements be imposed upon the County as the undisputed sole operator of the Landfill and that the Regional Board suspend any further action imposing the monitoring and reporting requirements on the School District until a determination is made either by the Regional Board or the State Board regarding: (1) the threat to groundwater at or surrounding the Landfill: and, (2) the County's responsibility for compliance with Order No. 97-11. (*Ibid.*)

25. On January 23, 2007, the Regional Board denied the School District's request. (See Exhibit 7 attached hereto.) The School District thus filed a petition to the State Board challenging the Regional Board's decision to deny the foregoing requests.

VI.

### HOW THE PETITIONER IS AGGRIEVED

26. The monitoring and reporting requirements imposed by the Regional Board on the Landfill should be waived because there is no evidence to support the Regional Board's conclusion that the Landfill has contributed to the contamination of the groundwater at or surrounding the Landfill. The SWAT report prepared by the School District demonstrates that there is no current threat to groundwater contamination from the Landfill. The report concludes that only one of the six wells monitored, MW-3, contains VOCs. The report also concludes that: "The source of the VOCs [in **MW-3**] is unknown." [Emphasis added.] (See Exhibit 8, p. 12, attached hereto.) Thus there is no evidence that the Landfill and any contamination at MW-3 well are related. As indicated in a letter from the Regional Board to the School District on January 13, 2006, the Regional Board reached the conclusion that the Landfill and the contamination are related simply because "Regional Board staff experiences with similarly aged facilities...." (See

1 Exhibit 9, p. 4., attached hereto.) This is nothing more than a perfunctory conclusion.

2         27. In addition, the Regional Board has ignored the undisputed fact that the Well  
3 Location Map shows that the contaminated well is more than 250 feet from the perimeter of the  
4 site and is not within the groundwater flow direction. It is therefore a realistic possibility that the  
5 source of the VOCs is from some other source and not from the Landfill.

6         28. Section C. of the Monitoring and Reporting Program for Order No. 97-11 states  
7 that the groundwater detection monitoring program for a landfill may be waived where a SWAT  
8 report has demonstrated that there has been no discharge of hazardous substances to groundwater  
9 from the landfill. The Regional Board agreed with the School District that Section C. permits the  
10 monitoring and reporting requirements to be waived. (See Exhibit 7 attached hereto.) The  
11 Regional Board's position is that the School District was required to file a petition for review of  
12 Addendum No. 1 to Order No. 97-11 (adding the Landfill to the Order's requirements) within 30  
13 days of its adoption. (Ibid.) The Regional Board's response is misleading because the School  
14 District is not seeking administrative review of the applicability of Order No. 97-11, through  
15 Addendum No. 1, to the Landfill. Instead, the School District seeks a waiver of the monitoring  
16 and reporting requirements based upon the results of the SWAT report pursuant to Section C of  
17 the M&RP for Order No. 97-11.

18         29. The Regional Board's response to the School District's request to waive the  
19 monitoring and reporting requirements being imposed on the Landfill further concludes that "...  
20 the SWAT report does not definitively attribute these VOCs to the landfill, ....." (See Exhibit 7  
21 attached hereto.) There is no definitive evidence that the Landfill is the source of VOCs that  
22 have been identified outside of the Landfill. The Regional Board's findings are nothing more  
23 than speculative conclusions that ignore the other possible sources of contaminants surrounding  
24 the Landfill.

25         30. Accordingly, since the SWAT report does not provide a conclusion for the source  
26 of groundwater contaminants, the Regional Board cannot continue to require the School District  
27 to monitor and report on the Landfill. The School District requests that the State Board direct the  
28 Regional Board to waive the requirement, pursuant to Section C of the M&RP for Order No. 97-

1 11, that the School District be responsible for monitoring and reporting requirements E.8 and  
2 Section D. and E.

3 31. There is no dispute that the operator of the Landfill is the County and that the  
4 Regional Board has designated the County as the operator of the Landfill. Thus the Regional  
5 Board should impose the monitoring and reporting requirements (and all other requirements) in  
6 Order No. 97-11 and Addendum No. 1 on the County, not the School District.

7 32. The Regional Board, however, has chosen not to enforce Order No. 97-11 against  
8 the County, which has spawned litigation between the County and the School District. Even more  
9 troubling is the direction given by the State Board on this matter. John Richards, counsel for the  
10 State Board, wrote on January 5, 2001:

11 Recognizing that the County of San Diego is one of the region's (if not the  
12 world's) most recalcitrant and irresponsible dischargers of solid waste, and that it  
13 is utterly determined to evade its equitable responsibility for decades of  
14 inappropriate waste management practices, why does the board want to have to  
15 require the County to undertake a SWAT for a landfill that is, apparently, now  
16 owned by the School District? I am perfectly willing to assume that, some time in  
17 the distant past, while the county was filling the National City Duck Pond with  
rubbish and toxic debris, it also was filling up the area that is now Bell Jr High  
with similar municipal solid waste. Nonetheless, why should the board insist on  
starting this fight with the county if the school district also qualifies as an  
"owner/operator?"

18 I agree that, as a matter of policy and equity it would be preferable to  
19 require the "operator" rather than the "owner" to do the SWAT, but it may be  
20 more practical and expedient in this case to proceed with the School District and  
let the School District pursue cost recovery from the County as the perpetrator of  
any problems that the School District encounters.

21 33. It is not the responsibility of the School District to continue to pay fees and incur  
22 monitoring and reporting expenses for the Landfill when the Regional Board has determined that  
23 the County is the sole operator of the Landfill. Nor is the School District's responsibility to take  
24 on responsibilities which clearly belong to the County simply because the State Board chose to  
25 take the path of least resistance.

26 34. Rather than requiring the School District to continue to expend resources on  
27 monitoring and reporting on groundwater contamination indefinitely, the Regional Board should  
28

1 error on the side of the School District until an definitive source of the contaminants is  
2 determined. Such resources should be spent on the children of the San Diego Unified School  
3 District not on endless monitoring for contaminants, that to date, no one can say positively exist  
4 because of the Landfill.

5 35. The Regional Board's response to the School District's request to name the  
6 County as the responsible party for Order No. 97-11 was that the request was not timely since it  
7 was not within the "jurisdiction period" after the Regional Board adopted Addendum No. 1 in  
8 June 2000. This logic is incompatible with the Regional Board's designation of the County, not  
9 the School District, as the responsible "operator" for the Landfill in October 2000, which  
10 occurred *after* the Regional Board added the Landfill to Order No. 97-11. It is contradictory for  
11 the Regional Board to hold the County accountable for a SWAT report that analyzes the results  
12 from groundwater monitoring on a quarterly basis while at the same time requiring the School  
13 District to fulfill the monitoring and reporting requirements in Order No. 97-11 and Addendum  
14 No. 1. The County's refusal to prepare a SWAT report and reluctance to take responsibility for  
15 the Landfill does not justify the Regional Board targeting the School District for the monitoring  
16 and reporting requirements.

17 36. The continual demands by the Regional Board upon the School District for the  
18 Landfill, while ignoring the County, is diverting much needed resources from the School District.

19 37. The School District requests that the Regional Board and the State Board suspend  
20 the monitoring and reporting requirements being imposed on the Landfill until a determination is  
21 made regarding: (1) the threat to groundwater at or surrounding the Landfill and (2) the County's  
22 responsibility for the monitoring and reporting requirements in Order No. 97-11.

23 38. Further, the monitoring and reporting requirements must be suspended until a  
24 determination can be made as to the source of the VOCs. In an August 26, 2005 letter from the  
25 Regional Board regarding the 2004 SWAT report, the Regional Board states, "The SWAT report  
26 does not provide a conclusion on the source of the ground water contaminants within the shallow,  
27 perched aquifer. The SWAT Report suggests the placement of additional wells, groundwater  
28 monitoring and sampling in order to provide a more complete assessment of the gradient and flow

1 direction of ground water located within the perched zone.” (See Exhibit 10 attached hereto.)

2 39. In light of the uncertainty of these comments, the School District requests that the  
3 monitoring and reporting requirements be suspended until such time as a determination is made:  
4 (i) concerning the source of the VOCs; and (ii) the County’s responsibilities concerning the  
5 Landfill.

## 6 VII.

### 7 ACTIONS PETITIONER REQUESTS THE STATE BOARD TO TAKE

8 40. In order to remedy the above actions taken by the Regional Board, the School  
9 District respectfully requests that the State Board take action as follows:

10 (a) add the County to Order No 97-11 and impose all requirements contained within  
11 Order No. 97-11 upon the County;

12 (b) waive all monitoring and reporting requirements (underlying the NOV) contained  
13 within Order No. 97-11 upon the School District; and

14 (c) suspend of any further action against the School District concerning monitoring  
15 and reporting requirements under Order No. 97-11 at the Landfill until (i) the threat, if any, to  
16 groundwater can be established, and (ii) the County’s responsibility for compliance with Order  
17 No. 97-11 is established.

## 18 VIII.

### 19 LIST OF PERSONS INTERESTED IN THIS MATTER

20 41. Petitioner has requested that the Regional Board forward a list of interested  
21 persons to the State Board.  
22

## 23 IX.

### 24 STATEMENT OF COPIES FURNISHED

25 42. In accordance with the requirements of Title 23, section 2050(a)(8) of the  
26 California Code of Regulations, a copy of this petition has been sent to the California Regional  
27  
28



1 Water Quality Control Board, San Diego Region and to the County of San Diego, the responsible  
2 discharger for the Landfill. A proof of service, including the County's mailing address, is attached  
3 hereto as Exhibit 1.

4 X.

5 ADMINISTRATIVE RECORD

6 43. Petitioner has requested that the Regional Board prepare a copy of the  
7 administrative record for the State Board's review.

8  
9 XI.

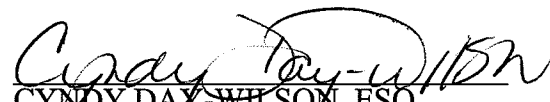
10 CONCLUSION

11 For the foregoing reasons, the School District respectfully requests that the State Board:  
12 (1) direct to the Regional Board to waive the monitoring and reporting requirements being  
13 imposed on the Landfill; (2) direct the State Board add the County to Order No. 97-11 and  
14 impose the monitoring and reporting requirements on the County; and (3) direct the Regional  
15 Board to suspend any further imposition of the monitoring and reporting requirements until the  
16 threat to groundwater at or surrounding the Landfill and the County's responsibility for  
17 compliance with Order No. 97-11 is determined.

18  
19 BEST BEST & KRIEGER, LLP

20  
21 DATED: March 19, 2007

22 BY:

  
23 CYNDY DAY-WILSON, ESQ.  
24 Attorneys for PETITIONER SAN DIEGO  
25 UNIFIED SCHOOL DISTRICT

26 345916.1